

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18114010
DANNY L. AND PAULA A. REED) Date Issued: July 31, 2019
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OPINION

Representing the Parties:

For Appellants: Danny Reed, Taxpayer
Paula Reed, Taxpayer

For Respondent: Mira Patel, Tax Counsel

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045, Danny and Paula Reed (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$956, plus applicable interest, for the 2012 tax year. This matter is being decided based on the written record because appellants waived the right to an oral hearing.

ISSUE

Whether appellants established error in FTB’s proposed assessment for the 2012 tax year, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellants, a married couple, timely and jointly filed a 2012 California Resident Income Tax Return claiming \$54,471 in itemized deductions.
2. On September 19, 2014, the Internal Revenue Service (IRS) began an examination of appellants’ 2012 federal tax return. Upon audit, the IRS disallowed claimed charitable contributions of \$2,253, medical and dental expenses of \$16,848, and miscellaneous itemized deductions of \$13,450. On September 8, 2015, the IRS reported to FTB that it was making these adjustments to appellants’ 2012 federal income tax return.

3. On September 14, 2015, the IRS assessed additional taxes based on the federal adjustments, and its action became final.
4. In a Notice of Proposed Assessment (NPA) dated September 29, 2016, FTB proposed increasing appellant's taxable income by \$32,551, based on the federal adjustments.
5. Appellants protested the NPA by letter dated October 29, 2016, and requested additional time to gather documentation to support the claimed deductions.
6. By letter dated September 1, 2017, FTB notified appellants that FTB was going to deny the protest unless appellants responded by October 2, 2017, with new information to support their position. Appellants responded by letter dated September 8, 2017, notifying FTB that their dispute with the IRS was now completed, and requesting a breakdown of the adjustments proposed by FTB. FTB responded by letter dated October 31, 2017, and enclosed information on the proposed adjustments.
7. On March 1, 2018, appellants notified FTB that appellants had destroyed all their 2012 tax documents after completing the audit with the IRS. Appellant-husband stated that it would take some time to gather and "recreate some documents from my computer" to support the deductions.
8. On October 29, 2018, FTB issued a Notice of Action (NOA) denying the protest.
9. By letter dated November 2, 2018, appellants timely appealed the NOA. In their appeal, appellants stated that they were not disputing the liability as proposed by FTB.¹ Instead, appellants contend that they already paid the liability to FTB. In support, appellants attached a final notice before lien and levy for the 2013 tax year—the year *following* the year at issue in this appeal—dated August 8, 2018, in the amount of \$1,208.96. Additionally, appellants provided a credit card statement showing that a payment of \$1,208.96 was charged to their credit card on August 16, 2018. Finally, appellants criticized FTB for requiring appellants to do unnecessary work gathering proof of payment for this appeal, and for failing to verify whether the tax has been paid before issuing the NOA.

¹ The original letter stated appellants were not filing an appeal. Instead, appellants contended they already paid \$1,208.96 towards the \$1,146.78 in taxes and interest listed on the NOA for 2012, and as such had overpaid their liability by \$62.78 (the difference between these numbers is actually \$62.18). Appellants subsequently indicated that they intended to pursue this appeal.

DISCUSSION

Gross income means all income from whatever source derived, unless specifically excluded. (Rev. & Tax. Code, § 17071; Int.Rev. Code, § 61(a).) The taxpayer bears the burden of establishing entitlement to any deductions claimed. (*Appeal of Gilbert W. Janke* (80-SBE-059) 1980 WL 4988; *Appeal of J. Walshe and M. Walshe* (75-SBE-073) 1975 WL 3557.) If the IRS makes a change or correction to any item of gross income or deduction, the taxpayer must report the federal change to the FTB within six months after the date it becomes final. (Rev. & Tax. Code, § 18622(a).) The date of each final federal determination is the date the IRS assesses the tax within the meaning of Internal Revenue Code section 6203 (which provides that the IRS shall record the liability of the taxpayer pursuant to the applicable rules and regulations). (Rev. & Tax. Code, § 18622(d).) An NPA issued by FTB based on a final federal determination is presumed correct, and the taxpayer bears the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Sheldon I. and Helen E. Brockett* (86-SBE-109) 1986 WL 22731.)

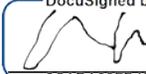
Here, appellants failed to provide any documentation to support the disallowed deductions, and they do not contend that the IRS and FTB disallowances were incorrect. Therefore, we have no basis to make any adjustments to the amount of tax proposed by FTB. Furthermore, appellants' payments towards their outstanding 2013 tax year liability have no bearing on the liability at issue in this appeal, which is for the 2012 tax year.

HOLDING

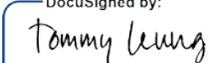
Appellants did not establish error in FTB’s proposed assessment, which is based on a final federal determination.

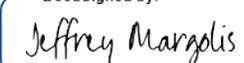
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Jeffrey I. Margolis
Administrative Law Judge